

Call to Order:

The meeting was called to order at 7:06 p.m. Present were Chair, Joan Duff, members Vincent Chiozzi, Jay Doherty, Eric Macaux, Lelani Foster and associate member Zach Bergeron; also present were Paul Materazzo, Director Planning, Lisa Schwarz, Senior Planner and Carol McGravey Town Counsel.

Executive Session

Ms. Foster moved that the Board vote to go into Executive Session to discuss confidential communications with Town Counsel for legal advice, and to discuss litigation strategy in the cases of Hunter v. Andover Planning Board and that the Chair declare that an Open Session would be detrimental to the Town's litigation strategy position, and to return to Open Session. The Chairman so declared that Open Session would be detrimental to the Town's litigation position. Roll Call: Mr. Bergeron yes, Mr. Macaux yes, Mr. Doherty yes, Mr. Chiozzi yes, Ms. Duff yes, and Ms. Foster yes.

At 7:14 P.M., the Board motioned to adjourn from Executive Session to move to Open Session and not to return to Executive Session. Roll Call: Mr. Bergeron yes, Mr. Macaux yes, Mr. Doherty yes, Mr. Chiozzi yes, Ms. Duff yes, and Ms. Foster yes.

The Board returned to open session at 7:16 p.m.

Hunter v. Planning Board:

Ms. Duff informed the audience that the executive session has been closed and there would be a brief discussion in the judgment of Hunter v. Planning Board. Carol McGravey, Town Counsel, stated that what was before the Board this evening was the approval of an agreement to judgment in the land court case brought by Lynne Langlois Hunter which was an appeal of an approved subdivision. The parties in this matter have agreed to nullify the Special Permits and have agreed that there would be no finding that any of the decisions of the Planning Board were erroneous. Calvin Perry, 25 Timothy Drive asked what annulled means. Attorney McGravey stated that it is as if it never happened. Mr. Perry asked if that was opposed to being dismissed, in error or some other term. Attorney McGravey stated the case is dismissed and the Special Permits are annulled. Mr. Perry asked when another permit may be applied for. Attorney McGravey stated at any time.

On a motion by Mr. Macaux seconded by Ms. Foster the Board moved to authorize Town Counsel to sign and file the Agreement for Judgment in Hunter v. Andover Planning Board, Land Court No. 10 Miscellaneous 428884. **Vote:** Unanimous (6-0).

Other Business:**Dawn Circle Bond Reduction:**

Mr. Materazzo informed the Board that it is the recommendation of Town Planner Jacki Byerley that the bond held by the Town for completion Dawn Circle be reduced from \$46,800.00 to \$20,800.00 per her memo dated November 6, 2013. He stated that more work has been completed on the site and the developer is preparing street acceptance documents.

Dawn Circle Bond Reduction (cont'd):

On a motion by Ms. Foster seconded by Mr. Bergeron the Board moved to approve the reduction of the Performance Guarantee to secure the proper construction and completion of the services and ways to \$20,800.00 as recommended by the Department of Public Works in a memo dated November 1, 2013. **Vote:** Unanimous (6-0).

Gregory Circle Bond Reduction

Mr. Materazzo informed the Board that it is the recommendation of Town Planner Jacki Byerley that the bond held by the Town for the completion of Gregory Circle be reduced from \$56,800.00 to \$25,600.00 per her memo dated November 6, 2013.

On a motion by Ms. Foster seconded by Mr. Doherty the Board moved to approve the reduction of the Performance Guarantee to secure the proper construction and completion of the services and ways to \$25,600.00 as recommended by the Department of Public Works in a memo dated October 30, 2013. **Vote:** Unanimous (6-0).

Andover Tomorrow Forum

Mr. Materazzo informed the audience that the Town would be hosting an Economic Development Forum with Barry Bluestone from Northeastern University on Wednesday, November 20, 2013 at 7 p.m. at the Public Safety Center and he encouraged all to attend.

Medical Marijuana

Mr. Materazzo informed the Board that a working group has been put together to plan for medical marijuana dispensaries. In the coming weeks a draft overlay will be presented to the Board for comment with the expectation of presenting a recommendation for Town Meeting 2014. The possible recommendations include a zoning change, a use change or an overlay district. The benefit of an overlay district is that it can be very specific and create rules. Mr. Chiozzi asked if it would be an overlay for a specific district or an overlay for any district. Mr. Materazzo answered that it could be either. Ms. Duff asked if they have enough time to get ahead of any applicants. Mr. Materazzo answered that the Selectmen chose not to move forward with a moratorium at the last Town Meeting so today it would be classified as a medical use and could be located anywhere in Town that said use is allowed today. The Town would prefer to pin down a specific location and write regulations for the use.

Mike Roli of 2 College Circle asked if there was a limit to how many facilities could come to Town. Mr. Materazzo answered that there can be five facilities in one county. If a facility wants to come to Andover, the Town wants to be prepared to facilitate that use. Mr. Macaux asked if the Town was doing this at the right speed to get ahead of the process and if there is enough time to write the correct language. Mr. Materazzo stated that they already have a draft that they are using as a model, so they have a good start. The Department of Public Health has come out with some stringent requirements and has set forth the guidelines for the overlay. The overlay location will be community driven and would welcome questions and comments from the public.

Scope of Work - Town Park Master Plan:

Ms. Schwarz gave an overview of the process so far in the Scope of Work for the 20 acre municipal campus that will be part of the Town Park Master Plan. A site walk was performed in

Scope of Work - Town Park Master Plan (cont'd):

October with the Planning Board and Plant and Facilities which highlighted the changes at the site over the last ten years. Ms. Schwarz also went onsite with Al Retelle who has done a lot of work in the Park and has personally planted trees there in the 1960s. She showed a draft map of all of the trees in the park, a total of 57 trees from 20 varieties, not including shrubs. An inventory of the health and status of each tree was also taken. The next meeting on December 17th will be a design charette in the 3rd floor of the library.

Mary Garrity Cormier of 14 Nicole Drive, a member of the Council on Aging gave a presentation on behalf of the Center at Punchard, formerly known as the Senior Center, and their involvement in this process as a member of the municipal campus. The Center at Punchard would like to be at the table as this area is being developed. In order to have a social and economic balance in Town, the Town needs to keep the aging population in place. They are looking to serve more residents than they are currently serving in the over 55 population. To do this they want to extend their services beyond the confines of the Senior Center. They would like to see improvements made to the “back” of the municipal space. Improvements would be a “user-friendly” entrance, connectivity to the rest of the campus, reinvigorating the landscaping and capital improvements to the exterior.

Randy Hansen of 15 Pasho Street asked if anyone has asked to expand the tree maintenance into the surrounding neighborhoods and downtown. The Town often cuts down trees and does not replace them, and she would recommend a tree replacement plan.

Steve Wallingford of 15 Jordyn Lane spoke on behalf of the Patriotic Holiday Committee. He stated that the war memorials in the area of the Park and Playstead began to be formally dedicated in 1939 and need to be recognized. The Town needs to maintain the dignity of the memorials and his group opposes a playground anywhere near them. His group could not find a community within 5-10 miles of Andover that didn't have the same model of a common area with memorials and a distinct recreational area away from the memorials. They welcome temporary activities in the Park, but permanent structures are concerning.

Mr. Bergeron asked Mr. Wallingford if the group interpreted the dedication of the memorials as ownership of the area. Mr. Wallingford stated the Playstead yes, the Park no. Mr. Bergeron asked if the dedications were to commemorate or to grant ownership. Mr. Wallingford replied that the intent of the Selectmen in 1939 was to dedicate that area to the Andover Boys who served in the Great War. As such, the dignity of those solemn spaces needs to be preserved. Mr. Bergeron asked if these things could be done in harmony. Mr. Wallingford answered they are not against change, but they prefer that any changes are consistent with the fact that the areas are dedicated as war memorials. He is too embarrassed to even mention what some of the rumors are for things considered for the Park.

Mr. Wallingford gave a presentation that highlighted other local communities that have a town or city common with a separate area for a playground away from any memorials. These communities included North Andover, North Reading and Burlington. Mr. Wallingford stated that he did not know of any other community with a playground in their common. Ms. Schwarz stated that the Town of Dracut has a combined park.

Scope of Work - Town Park Master Plan (cont'd):

Mr. Macaux asked if the Park, Playstead and gymnasium are all intended to have the same solemnity and Mr. Wallingford answered no. Mr. Macaux asked if the dedicated spaces were all intended to be treated the same way. Mr. Wallingford stated the gymnasium and the areas surrounding the monuments should be used in the way that they were intended to be used. The Playstead has opportunities for a playground, including an area that has its own parking. Mr. Macaux asked if the dedication changed the individual uses to now be places of reflection and remembrance, or if at the time of dedication there was a recognized use for each area that was to remain. Mr. Wallingford stated that the uses were not changed; the gymnasium can still be used as a gymnasium. The Park itself has not been dedicated even though the monuments are there. Mr. Bergeron asked if they would be okay with renovations to the Playstead with proper signage. Mr. Wallingford answered yes with proper signage. Mr. Bergeron asked if they saw any opportunities for the Park and Playstead besides what is currently there. Mr. Wallingford stated that it is naïve to think that there will be no more memorials.

Mr. Doherty stated that at the site walk the best interest of the veterans in regards to the memorials was on everyone's mind. Mr. Wallingford stated that they want the Patriotic Holiday Committee to be an equal partner in this process. Ms. Duff stated that this is a process for all to participate. Ms. Schwarz added that there would be no meetings that were not posted public meetings. This process is for the entire campus and that is why a presentation was made tonight on the Center at Punchard involvement. The goal is to make the area a community campus. Mr. Wallingford reiterated that surrounding communities should be looked at that have done the same.

Willow Cheeley of 15 Burnham Road stated that she is a landscape architect and encouraged all not to get too set on the design. She also reminded the Board that Moms and Dads who are returning home from the service want to use these community spaces with their kids. There are very concrete ways to accomplish everything and the design charrette will be a great opportunity. It is imperative to remember that connectivity is important.

Cal Perry of 25 Timothy Drive asked how many trees in the Park are ill, and Ms. Schwarz answered three. He asked if improvements would be to replace three trees. Ms. Schwarz stated that they may see what they can do to keep the trees. There is one in bad shape but the rest of them need to be trimmed and better maintained. Mr. Perry asked if maintenance is already done. Ms. Schwarz stated that a recommendation would be for it to be done on a more regular basis. Mr. Perry asked if there was already a program in place and Ms. Schwarz stated that the field maintenance seems to be a larger priority and sometimes the trees go by the wayside.

29 Boutwell Road:

Ms. Duff opened the continued public hearings for a Definitive Subdivision and Special Permit for Earth Movement for a 4-lot subdivision located at 29 Boutwell Road.

Mr. Materazzo reviewed a memo from Jacki Byerley, Town Planner, dated November 6, 2013 which detailed the open items as of the date of the memo. The Conservation Commission has issued an order of Conditions for the roadway NOI, but the applicant has not yet filed for the water line NOI. The DPW is reviewing the comments from the applicant on their memo dated

29 Boutwell Road (cont'd):

September 24, 2013. A correction needs to be made to the note on the cover sheet for sidewalk waiver to change the word "side" to "sidewalk."

Mark Johnson, attorney for the developer asked if the comments had been received from the stormwater peer reviewer. Ms. Duff noted that there was not a memo from the peer reviewer in the Board's packet.

John Boardman of Hancock Associates, the engineer on the project reviewed the plan and his memo to the Board that informed them of the items that have been addressed to date from department comments. He informed the Board that the road will be public and named Fraser Drive. They are waiting for revised comments from the peer reviewer, and also for the Town Engineer to respond to the memo he sent stating that no published benchmark exists within the required 1,000 ft.

Ms. Duff asked if the Board was waiting on comments back from the Conservation Commission. Mr. Materazzo explained that the two Boards act independently of each other. If for some reason an applicant cannot move forward with a Planning Board approved plan based on the ruling of another Board, they would have to come back to the Planning Board with an amended plan. The only exception is if the Board feels that they need critical information from the other Board in order to make a decision. Mr. Boardman stated that they already have approval from Conservation for the roadway and utilities, and the only thing outstanding is the looping of the water line to Knollcrest.

Attorney Johnson stated that the Town holds a utility easement to Knollcrest which the water loop would go through. There is some confusion on if the Town and the owner of the property with the easement have to sign the NOI application for the water loop, and Town Counsel has not come back with an opinion. Attorney Johnson has researched the issue and found case law supporting his position which he entered into the record. Tom Urbelis, Town Counsel took a copy of the case law and stated he would have his colleague Attorney McGravey look into it.

Mr. Materazzo suggested that per Ms. Byerley's memo, the Board continue the hearing to the December 3rd meeting. Attorney Johnson asked if Ms. Byerley could have a draft decision by the next meeting. Mr. Materazzo stated that if all of the issues were taken care of he would assume Ms. Byerley would have something drafted for the Board to consider. Attorney Johnson then asked the Board if they were satisfied by Hancock's memo regarding the elevations. Mr. Boardman stated that he spoke with the Town Engineer and they could not come to an agreement on the benchmarks. The Board stated that they could not make a decision without hearing more from the Town Engineer.

On a motion by Mr. Macaux seconded by Mr. Doherty the Board moved to continue the public hearings for 29 Boutwell Road Definitive Subdivision and Special Permit for Earth Movement to December 3, 2013 at 7:30 p.m. **Vote:** Unanimous (6-0).

165 Haverhill Street – Merrimack Valley YMCA:

Ms. Duff opened the continued public hearing on an application submitted by the Merrimack Valley YMCA for a Special Permit for Major Non-Residential Project for the expansion and renovation of the existing facility located at 165 Haverhill Street.

Mr. Materazzo reviewed a memo from Jacki Byerley, Town Planner, dated November 6, 2013 which detailed the items still open. The Health Director is reviewing revised plans submitted by the applicant on October 8th. The Fire Department is requesting a revised turning template with the required 50 foot truck template. The DPW is reviewing revised plans regarding the plan to tie in to Andover water and abandon the North Andover connection. As of the memo date, the applicant had yet to provide information on sewer capacity, pool discharge backwash, a pool dumping schedule and pool gallon information. The DPW is requesting clarification on the plan of what is being abandoned for the drainage system. The detention/recharge area needs to follow DEP guidelines for test pits and how many are needed to use as credit with DEP. The recharge area needs pretreatment for catch basins surrounding the infiltration area. The O&M plan should include submission of reports to Planning to be forwarded to DPW for review.

Rick Feldman of Feldman Development Partners showed a rendering of the expanded building and a landscaping plan. He stated that they had a walk through with the Conservation Director and they are on the Conservation agenda for December 2nd. Mr. Feldman addressed the abutting condominium complex's concern about the culvert. He showed pictures of the 1 ft wide culvert on the condominium property that is downstream from a 3 ft wide culvert on the YMCA property. The YMCA is sensitive to the condominium and they have tried to help in the past by cleaning their culvert, but there is not much else that can be done because of the size difference. Mr. Bergeron asked if the new design would cause less water to be sent into the culvert. Mr. Feldman stated a lot of the water will now go into underground storage so the flow will not be increased. Mr. Doherty asked if the culverts have been causing problems. Mr. Feldman answered not recently, but in the past there has been some erosion downstream. Mr. Chiozzi asked how long the culvert is underground. Mr. Feldman stated that the inlet is just off their property line and the outlet is about 200 ft away.

Ken Cram of Bayside Engineering reviewed the traffic memo that was submitted to the Board. He stated that he observed the site during both the morning and evening peaks. The YMCA gave him several weeks' worth of data on member check-ins over the course of the year. His analysis is based on the highest week of check-ins, the current membership of 4,200 and the projected membership of 6,000. He projects 75-80 additional trips over the expansion of the membership, which may take 5-7 years. About 2/3rds of that number will be entering the site and 1/3rd of that number will be exiting the site during peak times. In the peak evening period he observed at most five cars queued at once to leave the site which cleared relatively quickly. The site is benefitted by signals on either end that provide gaps in the Haverhill Street traffic flow. Some cars waiting to get out of the site had to wait 20-30 seconds but that is considered a "C" level of service. He did not see anyone wait more than a minute to exit the site. He recommends improved signage at the entrance and exit to better clarify that they are one-ways. He also recommends striping at the exit for distinct right turn only and left turn only lanes.

165 Haverhill Street – Merrimack Valley YMCA (cont'd):

Mr. Doherty asked how the traffic affects the condominium complex across the street. Mr. Cram stated that in his observations the heaviest volumes of cars entered the YMCA by taking a right turn from Haverhill Street. If that was 60% of the volume, then it would calculate to 20 cars traveling down Haverhill Street or one car every three minutes. He did not witness those exiting Coachman's Ridge having long delays. If individual drivers choose to be more cautious, it will take more time to exit, but there is no way to predict driving habits. Ms. Foster asked if those exiting the facility take a longer time due to caution than those pulling in. Mr. Cram answered that they do.

Mr. Chiozzi asked what the existing parking is and how many spaces will be added. Mr. Feldman stated that they currently have 242 existing spaces and they will be adding 139 more for a total of 381. Mr. Chiozzi commented that they are adding 50%. Mr. Feldman added that it is still above the numbers required by the Planning Board. Mr. Doherty asked if centering the entrance and exit might make a difference. Mr. Feldman answered that the circulation and flow is at its best as it is now. Mr. Cram added that there is also a bus stop for the YMCA with 1-2 coming an hour so the circulation works best for the buses.

On a motion by Ms. Foster seconded by Mr. Macaux the Board moved to continue the public hearing for the YMCA expansion to December 3, 2013 at 7:30 p.m. **Vote:** Unanimous (6-0).

After the vote on the YMCA, Ms. Duff and Mr. Bergeron left the meeting and did not return.

Reynold's Street:

Mr. Chiozzi began the discussion on Reynolds Street. Mr. Materazzo invited the developer to speak in regards to their request on Condition No. 6 of the approval.

Gail Johnson, the developer and owner of 3 Reynolds Street, stated that she and her husband support Cheryl Murphy's prior request to allow the pavement to remain in place and connect her driveway. They support connections of anyone with rights in the road, but they have concerns about drainage and safety issues if others connect. They would prefer that any connection require a plan and Planning Board approval.

Bill Johnson, the developer and owner of 3 Reynolds Street, stated that the original approval was not meant to restrict connections but to move on with the business at hand and not focus on other connections. He is asking that those who want to connect come to the Board with a driveway connection plan. Mr. Chiozzi asked if this was all hypothetical because there are no requests in front of the Board. Mr. Materazzo stated that the developer is seeking a clarification of the original approval due to a number of people who have inquired about connecting their driveway to Reynolds Street. The question is if the Board wants to be in a position to regulate private connections to a private way.

Cheryl Murphy of 233 Andover Street stated that any restriction or condition that Mr. Johnson wanted to place on somebody such as a plan should have been placed when the decision was recorded in 2010. The recorded decision states that it was exclusive and the Board could approve something if a proponent came to them, which is what she and her husband did. She is

Reynold's Street (cont'd):

not quite sure why this meeting is even taking place since Mr. Johnson failed to appeal the Board's decision on her driveway connection. Ms. Foster noted that the Johnsons are concerned about too many connections. She and asked if this discussion included the Murphy's connection. Mr. Materazzo stated that the Murphy's right to a connection has already been established by the Board, and the discussion now is about future connections. No one has formally petitioned the Board for one yet, so the Board needs to consider if they want to be regulating the private connection to the private way.

Jim Lyons of 12 High Vale Lane stated that as far as he and his wife can tell Mr. Johnson has no right to the pavement on the ground. In November 2010, the court stated that in 2005 Mr. Johnson constructed the roadway to access the Steir lot. No work was ever done on the approved subdivision lot also known as the Barash lot. The Town has argued in the past that Reynolds Street is not a street in the Town of Andover because of a court ruling that limited its width to 20 feet. In the appeals court at the summary judgment hearing Mr. Johnson admitted that he cannot get a building permit unless changes are made to the subdivision plan or he can show that the construction complies with the subdivision plan. The subdivision rules are very specific and any alterations or deviations from an approved subdivision plan require full hearings with full notice. A May 5, 2005 letter from Mr. Johnson talks about work to build on the Steir lot. On July 6, 2005 Mr. Johnson's attorney Mark Johnson stated that none of the work done was done under the original subdivision approval. The deed to the Barash lot eliminated part of Reynolds Street and contained an affidavit signed by Mr. Barash that stated that the paper streets shown on the plan were not in existence. Mr. Johnson's attorney stated that he had a right to put a road system in because the subdivision was in place before the subdivision control laws came in to existence. It is undeniable that there is now a road to provide access to the Steir lot. Mr. Johnson also put in utilities and a stub to the Steir lot even though it is unbuildable.

Mr. Materazzo stated that as the pavement exists now it is in violation of the original approval. The conditions state that no other driveways may be connected to the road and the Anderson Avenue pavement is considered a driveway connection. Mr. Lyons contends that in order to continue with the subdivision Mr. Johnson needs permission of all of those with rights in Reynolds Street. Mr. Johnson had rights in Reynolds Street when he owned the Steir lot. The 20 ft of Reynolds Street owned by the Barash lot was incorporated into the Barash lot leaving only the 20 ft owned by the Steir lot. Bernadette Lyons now owns the Steir lot and Mr. Johnson no longer has permission or rights to access anything in the roadway or use the infrastructure to access his lot. Mr. Lyons stated that he would be sending the Town a letter indicating that Mr. Johnson has no rights in Reynolds Street and that he would like the Board to bring back this issue.

Bill Johnson stated that the only subdivision was the Barash lot that was approved by the Board. Mr. Lyons has appealed every decision over the last 10 years. He cannot be out of compliance until the subdivision is complete, and it is not complete. He has never changed the configuration of the subdivision and has had permission and signatures on all applications as well as authorization letters.

Reynold's Street (cont'd):

Mr. Chiozzi stated that the discussion tonight goes back to a hypothetical of other people asking permission to connect their driveways, and no one has even asked yet. If and when someone asks the Board can take it up and ask questions and Mr. Johnson can provide testimony.

Cheryl Murphy of 233 Andover Street stated that confusion is coming from what the applicant's rights are in the roadway. Mr. Johnson made the improvement to the roadway as it is by saying he had an easement by estoppel as to the Steir lot. Chris Murphy of 233 Andover Street stated that the original Form C excluded access over Reynolds Street and Anderson Avenue to the Steir lot.

Mr. Chiozzi reiterated that all of this is hypothetical. Mrs. Johnson replied that it came from the request from Mrs. Murphy. Ms. Foster stated that Mrs. Murphy's request has come and gone, a decision was made and it was not appealed. There is no specific request to connect before them tonight. In her opinion, the issue of rights in the roadway is a private matter that should be heard in land court. Mr. Macaux asked if the only question is to interpret Mr. Johnson's rights in the roadway. If that is not the question, he doesn't know what the Board is supposed to be deciding here tonight. Mr. Materazzo stated that it is a private way with a number of people with rights in the way. Mr. Macaux stated that he understood but he has yet to hear from any of those people regarding their rights in the way.

Julie McCleod of 229 Andover Street stated that she sent a letter to the Board stating that she has every intention to tie in to Reynolds Street. She has rights in Anderson Avenue and as it connects into Reynolds. She thought that because she has rights in the roadway she can hire someone and improve it at any time. Mr. Materazzo stated that Ms. McCleod has made her intentions known over the years to connect to Reynolds Street but as the conditions read now, Reynolds Street is limited to one lot unless otherwise approved by the Board. The question is if the Board in its original decision took away or limited anyone's rights. Ms. Foster asked if this was the same thing that the Board had already dealt with regarding the Murphy's driveway connection. Chris Murphy 233 Andover Street stated that the difference is that he and his wife have ownership interest in Reynolds Street, they own to the center and Mr. McIntyre owns to the center. With the ownership in the road, nothing encumbers their title. They have registered land, no encumbrances recorded on the deed, and if he wants to connect his driveway he does not need any further permission. They did however follow the process for permission to connect.

Ms. Foster asked Ms. McCleod to point out her parcel on the displayed map. Ms. McLeod pointed to her property and Ms. Foster noted that she does not have frontage on Reynolds Street. Ms. McCleod stated that she has frontage on Anderson Avenue and can access Reynolds Street from it. She asked if the conditions are conditions placed upon the developer. Ms. Foster said the conditions are placed on Reynolds Street, not Anderson Avenue. Ms. McCleod stated that they are also putting conditions on the developer, and asked if they are placing conditions on the abutters. Ms. Foster stated that they are talking about Reynolds Street and the only abutters are the Murphys and the McIntyres. The Lyons's noted that they are also abutters. Mr. Macaux questioned if the placing of conditions on the subdivision makes the Board the governing body over who can connect.

Reynold's Street (cont'd):

Andrew Caffrey Jr., an attorney representing Mr. Johnson stated that the Planning Board cannot stop Ms. McCleod from improving Anderson Avenue and using it and the other private ways in the area. The Board originally granted the Johnsons permission to build a one lot subdivision on the Barash property with a condition that an additional building lot could not be built. There were no conditions stating that those with existing houses and frontage on these private roadways could not use them. He asked that the Board focus on what they are there for tonight. He stated that Mr. Lyons wants to re-litigate things that happened ten years ago that have been litigated multiple times.

Mr. Macaux stated that the Board can discuss driveway connections more if they have an actual request before them. If they are here to discuss rights in the roadway, this may not be the right forum. Attorney Caffrey suggested it is not in this Board's domain to determine ownership rights and the Board agreed. Attorney Caffrey stated that the Johnsons have tried unsuccessfully for a number of years to get a building permit for the Reynolds Street property. They have done everything the Planning Board has asked them to do and will continue to do that. Tom Urbelis, Town Counsel stated that the roadway modification that the Board approved is currently under appeal, so technically the subdivision is under appeal. He doubts that the Inspector of Buildings will issue a building permit for a subdivision that is under appeal. Attorney Caffrey asked that the Planning Board to allow Mr. Johnson to post a bond for the roadway and allow them to go forward. Attorney Urbelis stated that a bond is not before the Board tonight.

Mrs. Murphy stated that she wants to be heard before the Board considers any agreement regarding the roadway. Moving the roadway could cause drainage issues on her property. Mr. Lyons stated that he sent a letter to Mr. Materazzo requesting that the Board find that what has been constructed is in violation of the Board's January 2005 approval.

Ms. Foster stated that there are two questions before the Board tonight. The first is if they can determine rights in private roadways, which the Board has stated that they cannot, it is a matter for land court. Mr. Macaux stated that the second question is similar -- whether the Board can determine who can connect to a private roadway -- and he doesn't feel that the Board should make a lot of decisions tonight. Attorney Urbelis stated that when there are formal requests for driveway connections more could be done.

Mr. Materazzo asked Mr. Johnson if the Anderson Avenue dogleg is a driveway. Mr. Doherty also questioned why it was there. Mr. Johnson stated that he had permission from all Town departments to put it in exactly where it sits on the ground. Ms. Foster asked Mr. Johnson for a one sentence answer as to why he put Anderson in. Mr. Johnson stated it was to access the Steir lot which was approved by the Town.

John McIntyre of 231 Andover Street stated that he informally uses Reynolds Street due to the severe nature of traffic coming over the hill on Andover Street. He would like permission to continue to exercise their right to casually use Reynolds Street for their and their guests' safety. Mr. Chiozzi stated that it was dually noted.

Adjournment: The meeting was adjourned at 9:42 p.m.